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receive wages. This condition is apparently regarded by the court as waived by the defendant's refusal to accept. But a true waiver is where one party says that, in spite of the other's breach, he will continue the contract. Here the defendant does not say that, in spite of the plaintiff's enforced non-performance, the contract shall continue, but openly declares it shall not be completed. The condition, then, cannot be considered as waived, and as it has surely not been fulfilled, the plaintiff is not entitled to recover wages, which were dependent on the condition. The defendant has, of course, broken his promise to employ, and for this breach the plaintiff may recover damages. But as in the first action he could have recovered for the breach of the entire contract, no second action should be allowed. The opposite conclusion, in addition to being theoretically wrong, logically leads to the unjust result that a discharged servant is under no duty to find other employment to reduce the employer's damages. His willingness to serve being equivalent to service, he would be entitled to full wages, whether or not he could find work elsewhere.

Several American jurisdictions have adopted the doctrine of the principal case. *Armfield* v. *Nash*, 31 Miss. 361; *Booge* v. *Pac. R. R.*, 33 Mo. 212. Most of the recent decisions, however, are opposed. *Alie* v. *Nodrau*, 44 Atl. Rep. 891 (Me.); *James* v. *Allen Co.*, 44 Ohio St. 226. The doctrine seems to have been adopted on the authority of an English case which allowed *indebitatus assumpsit* for wages, where readiness to serve was alleged. This decision has since been discredited in England. *Emmens* v. *Elderton*, 4 H. L. C. 645, and a recent case shows that there would likewise be no recovery on the agreement to pay wages. *Bruce* v. *Calder*, [1895] 2 Q. B. 253.

RUNNING CABLE CARS WITHOUT LEGISLATIVE AUTHORITY. — An interesting question is involved in *Chicago General Ry. Co.* v. *Chicago City Ry. Co.*, 57 N. E. Rep. 822 (Ill.). The defendant company, acting under a charter authorizing it to operate street cars by animal power, used an underground cable to run its cars. One of these cable cars collided with a car belonging to the plaintiff, whereupon the latter brought an action for the damage resulting. The court held that as there was no allegation of negligence on the part of the defendant, the declaration did not disclose a good cause of action.

The position taken by the plaintiff was that such a use of the streets without legislative authority was a public nuisance, and that he, having sustained special damage, was entitled to recover. This contention is supported by cases holding that the wrongful user of a highway, whether by a traction engine or an unauthorized tramway, is a public nuisance. *Powell* v. *Fall*, L. R. 5 Q. B. D. 597; *Regina* v. *Train*, 2 B. & S. 640. Undoubtedly, if a private person without legislative authority should build and operate a cable line through the streets of a city, he would be violating the rights of the public. It is doubtful if it helps much to call it a nuisance, as the term has always been very loosely applied by the courts. However that may be, the public has a right to free and unobstructed passage over the streets. A line of cable cars would not only obstruct the street to a great degree, but would also make such use by the public more dangerous. This would seem to be such an invasion of the rights of the public as to be unlawful, in the sense that one who suf-

fers special damage should have an action for redress. But while it would be *prima facie* unlawful, yet when a public convenience demands it, the legislature has authority under its police power to legalize such use in certain cases. *Sawyer* v. *Davis*, 136 Mass. 239. If the operation of cable cars without legislative authority by an individual would be illegal, it is hard to see why it should be any the less illegal if done by a corporation. The court, however, says that the question whether the corporation has exceeded its chartered powers can only be raised in a direct proceeding by the state, and not collaterally in a suit by a private person. This is a broad statement of a rule that is rapidly gaining ground in our courts. 36 Am. Law Register, New Series, 18. While there may be much necessity for such a rule in certain cases where the question of corporate existence is involved, yet it is hardly justified in the principal case, where the gist of the question is not whether the corporation's act is *ultra vires*, but rather whether the legislature has legalized an act which is *prima facie* unlawful, whether it be done by a corporation or by an individual.

COVENANTS FOR PARTY WALLS. — Where owners of adjoining lots covenant that if either party builds, one wall may be placed on their boundary line, and the other party on using such wall shall pay for half its value, it is clearly expedient that such covenants should be enforceable both by and against the original owners or their subsequent vendees. The possible claim that exists where one party builds a wall is so intimately connected with the land that it ought to pass with its ownership, and the person subsequently using the wall is the proper party to pay for its value. Wherever the point has been raised, the courts have held that the covenants at all events could not be considered as running with the land, as they were thought to constitute a burden which would not run at law, and an active duty which would not run in equity. Judicial ingenuity has therefore been taxed to find other reasons for enforcing the liability.

The English court has recently, for the first time, grappled with the problem. *Irving* v. *Turnbull*, [1900] 2 Q. B. 129. In this case the plaintiff's vendor and the defendant at different times bought adjoining lots from the same person, it being covenanted in both cases that walls of buildings should be on the boundary lines, and that a party subsequently using such a wall should pay for half its value. The plaintiff's vendor built, and when defendants made use of this wall, the plaintiff sued for half its value. The court held, though "with no great confidence," that as covenants had been made with the original owner by both parties, directly or indirectly, there was sufficient privity between them to establish an implied promise. This reasoning seems unsound. The defendant never contracted with the plaintiff, but merely used a wall standing on his own land, which was, therefore, his own property. Under these circumstances it seems impossible on principle to raise an implied promise.

The American cases in which the point has arisen have generally reached this same result by holding that such an agreement means that the party first building shall have property in the entire wall until payment for half its value. Thus a subsequent user takes the property of another and a promise to pay is implied. *Maine* v. *Cumston*, 98 Mass. 317; *Burlock* v.